IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 54 OF 2005

IN

WRIT PETITION NO. 205 OF 2004

R.J. Khadiwala .. Petitioner

V/s

Air India Ltd. & ors. .. Respondents

Mr.J.P. Cama with Mr.Mohan Bir Singh for the Petitioner.

Mr.S.K. Talsania with Mr.J.S. Saluja i/b M.V. Kini & Co. for the Respondents.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 21ST SEPTEMBER 2005

P.C. :

1. Heard Mr.Cama for the Petitioner. Mr.Talsania appears for the Respondents.

2. This petition seeks review of the judgment and order passed by us on 6th May 2005 in Writ Petition No.205 of 2004 which was heard and decided along with Writ Petition No.78 of 2004.

3. Mr.Cama submits that the Petitioner herein is made to suffer along with the other Petitioner who was a Union Leader and who was suspended. He submits that

there is an error in the factual recording in para 3 of the judgment that this Petitioner was also suspended and further that there is an error in stating in para 7 that this Petitioner had also instigated the members of the Union not to operate the flights. He states that he had not done any such thing. We asked Mr.Talsania as to what is the exact position. He stated that the Petitioner had also been suspended and that action was taken against him on par with the other Petitioner since he was also an activist of the Union.

4. The other submission of Mr.Cama was with respect to the denial of the shortfall allowance to the Petitioner. He relied upon a judgment of a Single Judge in the case of **Shireen Dubash v. Air India Ltd. & Ors. in Contempt Petition No.30 of 1998 decided on 16th July 1998**. That was a case where the suspension of the Petitioner therein had been revoked retrospectively and, therefore, she had claimed the flying allowance. It is submitted that on the similar footing, the present Petitioner ought to be held as entitled to the shortfall allowance. The facts are different in both these cases. That was a case where suspension had been revoked. In the present case, the management had taken a conscious decision not to give flying duties to the Petitioner with which we did not find any fault in the

circumstances in which they took the decision.

5. Mr.Cama then submitted that the Petitioner's claim to raise this controversy elsewhere should at least be held as surviving. It is not possible to accept this submission as well. The point was fully canvassed before us and thereafter we have held that the management's action was justified and that the Petitioner was not entitled to the shortfall allowance since flying duty was not offered to him. We also held that it is one thing to claim this allowance in normal circumstances when juniors were given duties and seniors were not given duties. This was as against the present case where the management had not given the Petitioner flying duty at all for their justified reasons. We have held that the Petitioner ought to have challenged the decision of the management by going to the appropriate forum, but he chose to argue the claim before us which we have rejected as above.

6. We find no reason to recall or review / modify our decision. Review Petition is rejected.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)